

Lea Márquez Peterson – Chairwoman  
Sandra D. Kennedy  
Justin Olson  
Anna Tovar  
Jim O'Connor



JUSTIN OLSON  
Commissioner

JIM O'CONNOR  
Commissioner

## ARIZONA CORPORATION COMMISSION

November 18, 2021

*Re: Federal COVID-19 Vaccine Mandates and Employees of Public Service Corporations.*  
*Docket No. AU-00000A-20-0050.*

Dear Chairwoman and Commissioners:

On November 5, 2021, the Occupational Safety and Health Administration (“OSHA”) issued an emergency temporary standard (“ETS”) requiring employers with 100 or more employees to develop, implement, and enforce a mandatory COVID-19 vaccination policy.<sup>1</sup> Lawsuits have been filed around the country challenging this unconstitutional overreach. On November 12, the U.S. Court of Appeals for the Fifth Circuit upheld a stay on the vaccine mandate, concluding OSHA’s mandate “raises serious constitutional concerns” and “grossly exceeds [its] statutory authority.”<sup>2</sup> In its decision, the Court found the public interest is served by “maintaining the liberty of individuals to make intensely personal decisions according to their own convictions—even, or perhaps *particularly*, when those decisions frustrate government officials” (emphasis original).<sup>3</sup>

OSHA’s more recent vaccine mandate is in addition to the existing Biden administration’s Executive Order and Task Force Guidance (“Guidance”)— which are likewise being challenged in courts around the country— requiring federal contractors and subcontractors to impose mandatory COVID-19 vaccination policies on their employees.<sup>4</sup> Because of the Guidance’s broad language, it implicates public service corporations (“PSCs”) we regulate that have legally enforceable agreements with the federal government, including military bases in Arizona.

As Commissioners, we have the constitutional authority to “make and enforce rules, regulations, and orders for the convenience, comfort and safety, and preservation of the health” of the employees of PSCs.<sup>5</sup> Because the decision to receive a COVID-19 vaccination is an “intensely personal decision[]” that should be made “according to [one’s] own convictions”—as the Fifth Circuit Court of Appeals recognized— employees of PSCs should not be compelled to be vaccinated to keep their jobs. This is especially true when the federal government is intimidating companies to develop, implement and enforce such mandatory vaccine policies.

<sup>1</sup>COVID-19 Vaccination and Testing; Emergency Temporary Standard, [86 FR 61402-01](#).

<sup>2</sup>*BST Holdings, L.L.C. v. Occupational Safety & Health Admin., United States Dep’t of Labor*, [21-60845](#), 2021 WL 5279381 at 7, 16 (5th Cir. Nov. 12, 2021).

<sup>3</sup>*Id.* at 20.

<sup>4</sup>Executive Order [14042](#); Guidance for Federal Contractors and Subcontractors available [here](#).

<sup>5</sup>Ariz. Const. art. 15, § 3.

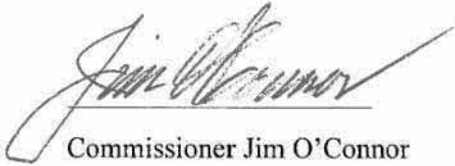
Therefore, we respectfully request that this matter be placed on the December open meeting for discussion and possible vote. We believe the Commission should establish a policy prohibiting PSCs from compelling their employees to be vaccinated to keep their job. For the same reasons as discussed above, we will also be filing a memorandum requesting that a new rulemaking docket be opened to strengthen this policy through the rulemaking process and the imposition of fines of up to five thousand dollars per violation in accord with Ariz. Const. art. 15, §§ 16, 19.

Ultimately, employees of a PSC should not have to decide between violating their convictions and keeping their job. We look forward to discussing this critical issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Olson", written over a horizontal line.

Commissioner Justin Olson

A handwritten signature in black ink, appearing to read "Jim O'Connor", written over a horizontal line.

Commissioner Jim O'Connor